



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2018-0511; FRL-10000-78-Region 2]

#### **Approval of Air Quality Implementation Plans; New York; Infrastructure Requirements for the 2008 Ozone, 2010 Sulfur Dioxide, and 2012 Fine Particulate Matter National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revisions, submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 2008 Ozone; 2010 Sulfur Dioxide; and 2012 particulate matter of 2.5 microns or less (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

**DATES:** This final rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

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**I. What action is EPA taking?**

The EPA is approving certain elements of the State of New York Infrastructure State Implementation Plan (SIP) as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the following National Ambient Air Quality Standards (NAAQS or standard): 2008 Ozone, 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 particulate matter of 2.5 microns or less (PM<sub>2.5</sub>). As explained below, the EPA has determined that the State has the necessary infrastructure, resources, and general authority to implement the standards noted above.

**II. What is the background information?**

Section 110(a)(1) of the CAA requires states to submit for approval into the SIP a plan that provides for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. The EPA commonly refers to such state plans as "infrastructure SIPs."

- On March 12, 2008, the EPA promulgated a revised NAAQS for ozone. 73 FR 16436 (March 27, 2008).
- On June 2, 2010, the EPA promulgated a revised primary NAAQS for SO<sub>2</sub>. 75 FR 35520 (June 22, 2010).
- On December 14, 2012, the EPA promulgated a revised primary NAAQS for PM<sub>2.5</sub> for the annual standard. 78 FR 3086 (Jan. 15, 2013).

The New York State Department of Environmental Conservation (NYSDEC) submitted the following revisions to its Infrastructure State Implementation Plan (ISIP):

- 2008 Ozone ISIP submitted on April 4, 2013
- 2010 SO<sub>2</sub> ISIP submitted on October 3, 2013
- 2012 PM<sub>2.5</sub> ISIP submitted on November 30, 2016

On August 26, 2016 (81 FR 58849), the EPA published its action on certain elements of NYSDEC's April 4, 2013 SIP submittal pertaining to the 2008 Ozone ISIP. The EPA's action addressed CAA section 110(a)(2)(D)(i)(I) which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any other state and CAA section 110(a)(2)(D)(i)(II) which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to protect visibility (prong 4). The EPA disapproved 110(a)(2)(D)(i)(I) (prongs 1 and 2) and approved 110(a)(2)(D)(i)(II) (prong 4) for the 2008 Ozone NAAQS. 81 FR 58849, 58855 (August 26, 2016).

The EPA approved portions of New York’s infrastructure SIP submittals for the 2008 Ozone and 2010 SO<sub>2</sub> NAAQS<sup>1</sup> pertaining to CAA sections 110(a)(2)(C), (D)(i)(II) (prong 3), and (J), including PSD interstate transport provisions.<sup>2</sup> 81 FR 95047 (December 27, 2016).

### **III. What is a section 110(a)(1) and (2) SIP?**

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS.

Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to the EPA plans to implement, maintain and enforce each of the NAAQS promulgated by the EPA. The EPA interprets this provision to require states to address basic SIP requirements including emission inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard.

### **IV. What elements are required under section 110(a)(1) and (2)?**

The infrastructure requirements of CAA sections 110(a)(1) and (2), relevant to this action, are

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<sup>1</sup>The approval also included the 2008 Lead NAAQS, which is not a subject of this action.

<sup>2</sup>CAA 110(a)(2)(C)(requires SIPs to include a program to provide for enforcement of emission limitations and other control measures described in CAA 110(a)(2)(A)); CAA 110(a)(2)(D)(i)(II)(which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state); CAA 110(a)(2)(J)(requirements related to consultation, public notification and PSD and visibility protection).

discussed in the following EPA guidance documents: EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards;” September 25, 2009, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards;” September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (“2013 Guidance”);<sup>3</sup> and March 17, 2016, “Information on Interstate Transport “Good Neighbor” provision for the 2012 Fine Particulate Matter (PM) National Ambient Air Quality Standards under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I).”

The EPA reviews each infrastructure SIP submission with the applicable statutory provisions of CAA 110(a)(2). The 14 elements required to be addressed by CAA section 110(a)(2) are:

- 110(a)(2)(A): emission limits and other control measures;
- 110(a)(2)(B): ambient air quality monitoring/data system;
- 110(a)(2)(C): program for enforcement of control measures and for construction or modification of stationary sources;
- 110(a)(2)(D)(i)(I) and (II): interstate pollution transport;
- 110(a)(2)(D)(ii): interstate and international pollution abatement;

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<sup>3</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” can be found at: <http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html>.

- 110(a)(2)(E): adequate resources and authority, conflict of interest, oversight of local governments and local authorities;
- 110(a)(2)(F): stationary source monitoring and reporting;
- 110(a)(2)(G): emergency powers;
- 110(a)(2)(H): future SIP revisions;
- 110(a)(2)(I): plan revisions for nonattainment areas (under part D);
- 110(a)(2)(J): consultation with government officials, public notification, and PSD and visibility protection;
- 110(a)(2)(K): air quality modeling and data;
- 110(a)(2)(L): permitting fees;
- 110(a)(2)(M): consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172 of the CAA. See 77 FR 46354 (August 3, 2012) and 77 FR 60308 (October 3, 2012, footnote 1). These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the nonattainment permit program requirements of section 110(a)(2)(C) for 2012 PM<sub>2.5</sub> or the nonattainment planning requirements related to section 110(a)(2)(I) for the 2008 Ozone, 2010 SO<sub>2</sub>, or 2012 PM<sub>2.5</sub>.

This action partially addresses Element D (interstate pollution transport, interstate and international pollution abatement). As mentioned in section II, the EPA previously disapproved 110(a)(2)(D)(i)(I) (prongs 1 and 2) and approved 110(a)(2)(D)(i)(II) (prong 4) for the 2008 Ozone NAAQS. 81 FR 58849 (Aug. 26, 2016). The EPA approved 110(a)(2)(D)(i)(II) (prong 3) for the 2008 Ozone and 2010 SO<sub>2</sub> NAAQS. 81 FR 95047 (December 27, 2016). This action addresses the remaining element D provisions for 2008 Ozone, 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS, except for 110(a)(2)(D)(i)(I) (prongs 1 and 2) provisions for the 2010 SO<sub>2</sub> NAAQS and the 2012 PM<sub>2.5</sub> NAAQS, which will be addressed in a subsequent action by the EPA. Therefore, with respect to element D, this action addresses:

- 110(a)(2)(D)(i)(II) (prong 3) for the 2012 PM<sub>2.5</sub> NAAQS;
- 110(a)(2)(D)(i)(II) (prong 4) for the 2010 SO<sub>2</sub> NAAQS and 2012 PM<sub>2.5</sub> NAAQS; and
- 110(a)(2)(D)(ii) for 2008 Ozone NAAQS, 2010 SO<sub>2</sub> NAAQS and 2012 PM<sub>2.5</sub> NAAQS.

## **V. What is EPA's approach to the review of infrastructure SIP submissions?**

The discussion of the EPA's approach to the review of infrastructure SIP submissions is detailed in the "Technical Support Document for the EPA's proposed Rulemaking for the New York State Implementation Plan Revision for Meeting the Infrastructure Requirements in the Clean Air Act" dated 2019 (TSD). The TSD is available in the electronic docket (EPA-R02-OAR-2018-0511) at [www.regulations.gov](http://www.regulations.gov). For additional information, the reader is also referred to EPA's Proposed Rule. 84 FR 27559 (June 13, 2019).

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires

states to make Infrastructure SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>4</sup> Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>5</sup> The EPA has other explicit Clean Air Act authority to address issues concerning a state's implementation of its SIP.

## **VI. What did New York Submit?**

NYSDEC submitted the following SIP submittals which address the infrastructure requirements for the identified NAAQS:

- 2008 Ozone ISIP submitted on April 4, 2013
- 2010 SO<sub>2</sub> ISIP submitted on October 3, 2013

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<sup>4</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA's prior action on New York's infrastructure SIP to address the Nitrogen Dioxide NAAQS, 85 FR 25066, 25067 (May 2, 2014).

<sup>5</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (Aug. 30, 2018).



- 2012 PM<sub>2.5</sub> ISIP submitted on November 30, 2016

New York's section 110 submittals demonstrate how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2008 Ozone, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. The plans reference the current New York Air Quality SIP, the New York Codes, Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by the EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the Internet at <https://www.epa.gov/sips-ny>.

## **VII. How has the State addressed the elements of the section 110(a)(1) and (2)**

### **“infrastructure” provisions?**

The EPA has determined that New York has the necessary infrastructure, resources, and general authority to address certain elements of the section 110(a)(1) and (2) infrastructure provisions for the 2008 Ozone, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. In summary, the EPA is approving the following elements and sub-elements of New York's Infrastructure SIP submittal for 2008 Ozone, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS (except as indicated): 110(a)(A) [emission limits and other control measures]; 110(a)(2)(B) [ambient air quality monitoring/data system]; 110(a)(2)(C) [program for enforcement of control measures] for the 2012 PM<sub>2.5</sub> NAAQS only; 110(a)(2)(D)(i)(II) [interstate transport], Prong 3 for 2012 PM<sub>2.5</sub> NAAQS, and Prong 4 for the 2010 SO<sub>2</sub> NAAQS and the 2012 PM<sub>2.5</sub> NAAQS; 110(a)(2)(D)(ii) [interstate and international pollution abatement]; 110(a)(2)(E)[adequate resources, state boards/conflict of interest, oversight

of local governments and local authorities]; 110(a)(2)(F) [stationary source monitoring]; 110(a)(2)(G)[emergency power]; 110(a)(2)(H) [future SIP revisions]; 110(a)(2)(J) [consultation with government official, public notification, and PSD for the 2012 PM<sub>2.5</sub> NAAQS only]; 110(a)(2)(K) [air quality and modeling/data]; 110(a)(2)(L) [permitting fees]; and 110(a)(2)(M) [consultation/participation by affected local entities].

The EPA is not acting on New York's submittal for 2012 PM<sub>2.5</sub> as it relates to nonattainment provisions, including the nonattainment NSR program required by part D in section 110(a)(2)(C) and is not acting on New York's submittals for 2008 Ozone, 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> as they relate to the measures for nonattainment required by part D in section 110(a)(2)(I), because the State's Infrastructure SIP submittals do not include nonattainment requirements related to these 2 elements. The EPA is also not acting on the visibility protection portion of element J for the 2012 PM<sub>2.5</sub> submittal.

### **VIII. What comments did EPA receive in response to the proposed action?**

On June 13, 2019 (84 FR 27559), EPA proposed to approve certain elements of New York's ISIP revisions, submitted to demonstrate that the State meets the requirements of the CAA for the 2008 Ozone; 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS. EPA received an erroneously filed comment from one commenter and an adverse comment from an anonymous commenter, in response to the June 13, 2019 proposed action.

*Comment:* A comment was submitted on EPA's proposed rule to deny New York's 126 petition submitted by Louisville Gas and Electric and Kentucky Utilities Companies.

*EPA Response:* These comments were submitted to the Docket for this action but are not applicable to this action and are filed in error. The comments will be addressed separately in the EPA’s Response to Comments on the Proposed Action on Section 126(b) Petition from New York (Docket ID No. EPA–HQ–OAR–2018–0170).

*Comment:* EPA must provide a complete record that New York has adequate resources and personnel to implement the SIP. EPA must audit NYSDEC to ensure proper funding and personnel to implement the SIP.

*EPA response:* EPA disagrees with this comment. An audit of NYSDEC is not required. CAA Section 110(a)(2)(E)(i) (Element E) requires that the State provide “necessary assurances” that it will have adequate funding and personnel to implement the relevant NAAQS. As stated in the proposal, in the context of acting on infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.<sup>6</sup> The EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The requirements of Element E, that the State have adequate resources and personnel, are clearly demonstrated in New York’s three ISIP submittals dated April 4, 2013 (for the 2008 ozone ISIP), October 3, 2013 (for the 2010 SO<sub>2</sub> ISIP), and November 30, 2016 (for the 2012 PM<sub>2.5</sub> ISIP), as

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<sup>6</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, 902 F.3d 971 (August 30, 2018). Also see proposed rulemaking in this action 84 FR 27559, 27561 (June 13, 2019)

detailed by the EPA in its technical support document (TSD) at pages 11-12, included in this docket. The submittals indicated that NYSDEC's Division of Air Resources (DAR) has over 200 full-time positions and receives both operating and capital funding. As New York's submittals indicates, operating funds are allocated to DAR annually and are used for daily administrative expenses. These expenses include salaries, fringe benefit, and indirect and non-personnel services such as travel, supply and equipment costs. Indirect costs are, in turn, allocated to other Departments or divisions that support DAR activities. DAR is allocated operating funds from five sources: General Fund, Utility Environmental Regulatory Account, Co-operative Agreements (i.e., EPA section 103 and 105 grants) and the Clean Air Fund, which is comprised of the Title V and Mobile Source accounts.

Capital funds are allocated to the DAR at the discretion of the New York State legislature and are used for the financing or acquisition of capital facilities such as the construction of an air monitoring site. DAR is allocated Capital funds from three sources: General Fund, Mobile Source Account and Rehabilitation and Improvement.”<sup>7</sup>

Therefore, the EPA has determined that the NYSDEC has provided necessary assurances that it has sufficient funding and personnel to meet the requirements of section 110(a)(2)(E)(i) for the 2008 ozone, 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS.

*Comment:* New York does not have adequate resources to implement a Regional Haze Program and EPA must impose a FIP on New York for two sources which commenter does not identify.

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<sup>7</sup> See submission of NY SIP for interstate transport of PM<sub>2.5</sub>

*EPA Response:* EPA disagrees that New York lacks adequate resources to implement a Regional Haze Program. As noted above, Element E, specifically CAA Section 100(a)(2)(E)(i), does not require an audit of resources and personnel. New York's Regional Haze plan was approved into the SIP for 18 facilities. 77 FR 51915 (Aug. 28, 2012). Only two facilities, Danskammer Generating Station and Roseton Generating Station, were subject to the Federal Implementation Plan (FIP). Specifically, New York's SO<sub>2</sub>, NO<sub>x</sub> and PM Best Available Retrofit Technology (BART) determinations and emissions limits for Danskammer Generating Station, Unit 4, and New York's SO<sub>2</sub> BART determinations and emissions limit for Roseton Generating Station, Units 1 and 2, were subject to the FIP. EPA's FIP determination did not cite resources or personnel as a basis for the FIP, rather, the State had provided a regional haze SIP with supporting analysis, but EPA disagreed with the specific BART determinations with regard to specific pollutants at specific units at these facilities that the State had submitted. 77 FR 51915 (Aug. 28, 2012). Moreover, for each of the sources, the EPA subsequently approved a source-specific SIP revision and withdrew the FIP. 82 FR 57126 (Dec. 4, 2017) (approving the SIP for Danskammer Generating Station, Unit 4) and 83 FR 6970 (Feb. 16, 2018) (approving the SIP for Roseton Generating Station, Units 1 and 2).

*Comment:* Elements, F, H, K, L and M: EPA does not provide any rationale for approving these elements other than to refer the reader to previous actions. EPA must review each submission on its own merits.

*EPA Response:* EPA reviewed and evaluated each submittal addressed in this action. As explained in the proposal (84 FR 27559) and the accompanying TSD for this rulemaking, and consistent with EPA's ISIP guidance, certain elements of the Infrastructure SIP submittals are not pollutant specific. EPA proposed to find that, for certain elements, including Elements F, H, K, L and M, the information provided in these submittals is consistent with or identical to prior submittals that addressed these specific elements. As explained in the proposal, EPA's prior actions on ISIPs included a full evaluation of the information provided by the State for each element, found the New York SIP submittal was sufficient, and approved it. New York, in each of its submittals in this action, has affirmed that the existing SIP meets the requirements of CAA sections 110(a)(1) and (2). The EPA is not aware of, and the commenter has not identified, anything about the 2008 ozone, 2010 SO<sub>2</sub>, or 2012 PM<sub>2.5</sub> NAAQS that would cause New York's SIP for these elements to be insufficient. In addition, New York's submissions for the 2008 ozone, 2010 SO<sub>2</sub>, or 2012 PM<sub>2.5</sub> NAAQS identify the basis for approving Elements F, H, K, L and M, and that is detailed in the TSD for this action at pages 12-14 for Element F, page 15-16 for Element H, page 20-21 for Element K, page 21 for Element L and pages 21-22 for Element M. Accordingly, approval of the pending submittal for these elements is appropriate.

*Comment:* For Element H, the EPA must disapprove this element until the EPA establishes a SHL for the PM<sub>2.5</sub> NAAQS. In establishing the PM<sub>2.5</sub> NAAQS under the 1997 standard the EPA stated that no SHL was able to be established so a placeholder value was being imposed at 500.

*EPA Response:* Element H concerns future SIP revisions and does not relate to establishment of a significant harm level (SHL). The issue of establishment of an SHL relates to Element G

(Emergency Powers). In promulgating the 2012 PM<sub>2.5</sub> NAAQS, EPA retained the pre-existing level of 500 micrograms per cubic meter (ug/m<sup>3</sup>), 24-hour average, for the Air Quality Index (AQI) value of 500 and did not establish a significant harm (SHL) for PM<sub>2.5</sub>. In the absence of a SHL, EPA maintains that the central components of a contingency plan would be to reduce emissions for the PM<sub>2.5</sub> sources at issue and to provide public communication as needed. See 2013 Guidance at pages 47-49. NYSDEC's November 2016 ISIP submittal addressing the Element G requirements for the 2012 PM<sub>2.5</sub> NAAQS meets the requirements of the EPA's 2013 guidance and, as explained in detail in the EPA's TSD for this ISIP submittal, is acceptable to the EPA.

*Comment:* The comment asserts that the EPA must review Element L with respect to permitting fees and reveal any defects at this time. The EPA cannot point to a previous approval of a similar or nearly similar submittal. EPA must audit the state's title V fee collection system to affirmatively prove that adequate fees are being collected in order to implement the title V program. The EPA cannot rely on a state claim without affirmatively confirming it.

*EPA response:* CAA 110(a)(2)(L) sets forth specific requirements that are in effect "until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V [title V]." The Administrator previously approved New York's title V operating program. EPA granted interim approval to the Title V operating permit program submitted by the State of New York effective December 9, 1996. 61 FR 57589 (November 7, 1996). The final interim approval at 61 FR 57590, determines that "the State has the authority to collect sufficient fees to implement its title V program" and, at 61 FR 57592,

allows the State to “issue operating permits pursuant to Title V of the Act to all major stationary sources.” See also 61 FR 63928 (Dec. 2, 1996) (correction); 40 C.F.R. Part 70, Appendix A. EPA subsequently granted full approval to New York’s program, effective November 30, 2001. 66 FR 63180 (December 5, 2001). In so doing, the Administrator found that the fee program was sufficient to cover all CAA permitting, implementation, and enforcement for new and modified major sources as well as existing major sources, which is consistent with the requirements of CAA 110(a)(2)(L). Statutory and regulatory citations related to the fee aspects of New York’s title V operating program are found in the TSD at p. 21. Accordingly, and consistent with EPA’s ISIP guidance, reliance on the existing, EPA-approved title V fee program is sufficient to approve this element and an additional examination of that approved program is not necessary.

## **IX. What is EPA approving?**

The EPA is approving New York’s submittals as meeting the infrastructure requirements for the 2008 Ozone, 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (C) [enforcement measures and PSD program for major sources for 2012 PM<sub>2.5</sub> only], (D)(i)(II) prong 3 [for 2012 PM<sub>2.5</sub> only], (D)(i)(II) prong 4 [for 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> only], D(ii), (E), (F), (G), (H), (J) [for consultation, public notification and prevention of significant deterioration 2012 PM<sub>2.5</sub> only], (K), (L) and (M).

The EPA is not acting on New York’s submittal for 2012 PM<sub>2.5</sub> as it relates to nonattainment provisions, the NSR program required by part D, in section 110(a)(2)(C) and is not acting on New York’s submittals for 2008 Ozone, 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS as they relate to the



measures for attainment required by section 110(a)(2)(I), as part of this proposed approval because the State's infrastructure SIP submittals do not include nonattainment requirements and the EPA will act on them when, if necessary, they are submitted.

The EPA is also not acting on 110(a)(2)(D)(i)(I) provisions (prongs 1 and 2) for the 2010 SO<sub>2</sub> NAAQS and the 2012 PM<sub>2.5</sub> NAAQS, which will be addressed in a subsequent action by the EPA.

## **X. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rulemaking pertaining to New York's section 110(a)(2) infrastructure requirements for the 2008 Ozone NAAQS, 2012 PM<sub>2.5</sub> NAAQS, and 2010 SO<sub>2</sub> NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq. Subpart HH New York

Dated: September 23, 2019.

Peter D. Lopez,  
Regional Administrator,  
Region 2.

Part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42.U.S.C. 7401 *et seq.*

**Subpart HH—New York**

2. In §52.1670, the table in paragraph (e) is amended by adding entries for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS”, “Section 110(a)(2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS”, and “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS” at the end of the table to read as follows.

**§52.1670 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

## EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS	Statewide	4/4/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (D)(ii), (E), (F), (G), (H), (K), (L) and (M).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	Statewide	10/3/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (D)(i)(II) prong 4, (D)(ii), (E), (F), (G), (H), (K), (L) and (M).
Section 110(a)(2) Infrastructure Requirements for the 2012 PM <sub>2.5</sub> NAAQS	Statewide	11/30/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) [enforcement measures and PSD program for major sources], (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J) [for consultation, public notification and prevention of significant deterioration] (K), (L) and (M).

[FR Doc. 2019-21955 Filed: 10/9/2019 8:45 am; Publication Date: 10/10/2019]